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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/556,097	12/26/2006	David A. Brock	38484-160 (BYRK-003)	4662
23630 7590 04/07/2008 MCDERMOTT WILL & EMERY LLP 28 STATE STREET BOSTON, MA 02109-1775				
EXAMINER				
MONBLEAU, DAVIENNE N				
ART UNIT		PAPER NUMBER		
2878				
MAIL DATE		DELIVERY MODE		
04/07/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/556,097

**Applicant(s)**

BROCK ET AL.

**Examiner**

Davienne Monbleau

**Art Unit**

2878

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/ISAC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date 5/4/07; 3/6/07

## DETAILED ACTION

### *Information Disclosure Statement*

The IDS filed on 3/6/07 and 5/4/07 have been acknowledged and a signed copy of each PTO-1449 is attached herein.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 33 and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** Claim 33 recites "said computer program comprising: ...". This is unclear because a computer program is recorded on a computer-readable medium, but said medium does not include the modules as claimed. For example, the test signal control module is not part of the medium.

**Further regarding claim 33,** it is unclear whether the language "configured for storage in a memory" is sufficient to meet the requirements of 35 U.S.C. 101, stating that functional descriptive material is statutory if it is recorded on some computer-readable medium. (See MPEP 2106.01).

**Claim 34** inherits the indefiniteness of claim 33.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-4, 6-11, 13-18, 21-27, 29, 30, 32, and 33, to the extent taught and understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Borich et al. (U.S. 7,267,799).**

**Regarding claims 1, 11, 14, 15, 25, 30, and 33, Borich (Figures 6 and 8A) discloses a** system, reflectometer, and computer program for identifying a test strip including a set of test pads, said system comprising: A. media (606) having data indicative (color code region) of a plurality of reference test strips and of a set of spectral signatures, wherein each of said spectral signatures is associated with a reference test pad type and includes a reference reflectance value at each of a plurality of wavelengths; B. a set of test signal generators (602) configured to impinge on said set of test pads at least one test signal having a known wavelength; C. a matrix of pixel-based detectors (610), configured to detect reflected signals from said set of test pads and to create a pixel-based image of said test strip, wherein said pixel-based image comprises a plurality of pixel sets and each pixel set corresponds to a different test pad on said test strip; D. a translator (618) configured to determine a reflectance value for at least one test pad from said set of test pads from the pixel based image; E. a pad typing module (618) configured to compare said reflectance value with a set of reference reflectance values from said set of spectral signatures for said wavelength to determine a test pad type; and F. an identification module (618), configured to identify said test strip as a function of a set of test pad types determined by said pad typing module. *(See also column 6, line 35 to column 7, line 41).* Borich further discloses identifying said test strip as a function of a set of determined test pad types.

**Regarding claims 2 and 16,** *Borich (column 5, lines 66-67)* discloses that said at least one test signal is a test signal from an LED light source.

**Regarding claims 3 and 17,** *Borich (column 5, line 66 to column 6, line 3)* discloses that said at least one test signal is a plurality of test signals generated from a set of LEDs, wherein each LED in said set of LEDs is configured to transmit light at different a wavelength.

**Regarding claims 4, 18 and 27,** *Borich (column 7, lines 25-41)* discloses that said translator is configured to determine a test pad reflectance value for each of said test pads.

**Regarding claim 6,** *Borich (column 10, lines 9-19)* discloses that step C includes determining a test pad order (i.e. sequence) from said test pad reflectance values.

**Regarding claim 7,** *Borich (column 10, lines 9-19)* discloses that step D includes selecting said set of reference reflectance values as a function of a test pad position in said test pad order.

**Regarding claims 8 and 22,** *Borich (Figure 6)* discloses that said detectors (610) are configured to create a pixel-based image of said test strip from said reflected signals.

**Regarding claims 9 and 23,** *Borich (Figure 6)* discloses that said pixel-based image comprises a plurality of pixel sets and each pixel set corresponds to a different test pad.

**Regarding claims 10, 24 and 26,** *Borich (Figure 6)* discloses that F. a test conduct module, configured to determine a test result for the at least one test pad as a function of the reflectance value.

**Regarding claims 13 and 32,** *Borich (Figure 6)* discloses that the test product is a reagent cassette (606) and the test areas include one or more of a test line, control line and reference in the test region.

**Regarding claim 20**, *Borich (column 10, lines 9-19)* discloses that said translator is configured to determine a test pad reflectance value for each of said test pads and said pad typing module is further configured to determine a test pad order (i.e. sequence) as a function of said test pad reflectance values.

**Regarding claims 21 and 29**, *Borich (column 10, lines 9-19)* discloses that said pad typing module is further configured to apply a selected set of reference reflectance values as a function of a test pad position in said test pad order.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 5, 12, 19, 28, 31 and 34, to the extent taught and understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Borich.**

**Regarding claims 5, 19, and 28, *Borich* (column 7, lines 27-30)** teaches test pads that may comprise various different forms and thus analysis techniques, but does not teach counting said test pad reflectance values to determine a test pad count and determining a test strip format as a function of said test pad count. It is known in the art that counting test pads/code patterns may also be a form of identifying an object. It would have been obvious to one of ordinary skill in the art at the time of the invention to count the test pads in *Borich* as another suitable means to determine the type of test strip being analyzed.

**Regarding claims 12, 31 and 34, *Borich*** teaches that the test product is a cartridge, but does not teach the test product is a test strip. It is known in the art that test strips may have the test areas and test pads. It would have been obvious to one of ordinary skill in the art at the time of the invention to use test strips as the test product in *Borich* as an alternate means to identify the test strips. The same identification process would be implemented.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davienne Monbleau whose telephone number is 571-272-1945. The examiner can normally be reached on Monday through Friday 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 571-272-2328. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Davienne Monbleau/  
Primary Examiner, Art Unit 2878